PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: HONOLULU, HAWAII Date: JUL 17 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

JUL1703_06H2212

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Philippines. The record indicates that in 1998, the applicant's current husband (Mr. [redacted] filed a K1 alien fiancée petition for the applicant. The K1 fiancée visa was denied in May 1998, due to the applicant's failure to disclose the fact that she was still married and had a child in the Philippines.

The record reflects that the applicant's marriage was annulled in 2000 and that Mr. [redacted] subsequently filed a second petition for alien fiancée on behalf of the applicant. The applicant traveled to Hawaii with a K1 fiancée visa in January 2001. She was detained at the airport, however, because she had failed to obtain a waiver of inadmissibility. The record reflects that the applicant's inspection was subsequently deferred to the Honolulu district office and that the applicant was released from detention. The record reflects that the district office extended the applicant's parole on several occasions until August 2002, so that the applicant could apply for advance permission to enter as a nonimmigrant and ultimately for permanent residency. The record indicates that on July 15, 2001, the applicant married Mr. [redacted] in Hawaii. On November 11, 2001, they had a child together. The applicant seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her husband and child.

The district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband and child. The application was denied accordingly.

On appeal, counsel asserts that Mr. [redacted] and the applicant's U.S. citizen child will suffer extreme emotional and financial hardship if the applicant's waiver of inadmissibility is not granted. Counsel asserts that if the applicant is removed from the United States, Mr. [redacted] will be forced to choose between living in the U.S. without his wife or relocating to the Philippines to be with them. Counsel asserts further that Mr. [redacted] elderly mother depends on him to care for her and that he would lose his long-term employment benefits if he relocated to the Philippines. Counsel also asserts that Mr. [redacted] would likely face difficulty finding work in the Philippines.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The district director's decision incorrectly indicated that the applicant's U.S. citizen child was a qualifying relative pursuant to section 212(i) of the Act, and that hardship to the child could be considered in assessing extreme hardship. It is noted, however, that the decision correctly quoted the actual law as contained in sections 212(a)(6)(C)(i) and 212(i) of the Act. Moreover, the district director's error is found to be harmless, as the decision did not find hardship to the applicant's daughter and the application would thus have been denied in either case.

As indicated above, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a citizen or lawfully resident **spouse or parent.** Congress specifically did not mention extreme hardship to a citizen or lawful resident child. Hardship to the applicant's U.S. citizen daughter will thus not be considered in the present case.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 568-69 (BIA 1999) provided a list of factors the Board of Immigration Appeals (BIA) deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered deported. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.* In addition, U.S. court decisions have held that family ties or other equities acquired after the initiation of removal proceedings need not be

accorded great weight. *See Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980).

In the present case, Mr. [redacted] was clearly aware of the facts surrounding the applicant's inadmissibility to the United States. Indeed, the applicant was first denied a visa to the United States pursuant to fraud and willful misrepresentations related to Mr. [redacted] 1998 fiancée petition for her. After the applicant's K1 visa was denied, Mr. [redacted] became fully aware that she was still married and had a child, and that these were the grounds for the denial of her visa. Mr. [redacted] was equally aware of these factors when he filed a second fiancée petition for the applicant after she obtained an annulment of her first marriage in the year 2000. Mr. [redacted] subsequently married the applicant and had a child with the knowledge that the applicant was still awaiting an Immigration and Naturalization ("INS", now known as the Bureau of Citizenship and Immigration Services, "Bureau") determination regarding her admissibility into the United States. All of the above factors seriously undermine the argument that Mr. [redacted] would suffer extreme hardship if the applicant were removed from the United States.

Moreover, the psychiatrist letter written on September 19, 2002, by Dr. [redacted] is not found to be probative of emotional hardship to Mr. [redacted] The letter is general and vague and it fails to provide information on how medical conclusions were reached or the basis of the doctor's expertise and opinion.

The letter pertaining to Mr. [redacted] mother's medical condition and need for daily care is equally vague and lacks probative value as to the level of his mother's dependence on Mr. [redacted]

The U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. Counsel's assertions that Mr. [redacted] would lose his current employment benefits if he relocated to the Philippines or that he could face difficulty in finding work in the Philippines do not, therefore, establish extreme hardship.

Furthermore, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, supra, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.